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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **OAKLAND DIVISION**
9

10 DIGITAL REG OF TEXAS, LLC,

11 Plaintiff,

12 vs.

13 ADOBE SYSTEMS INCORPORATED, et al.,

14 Defendants.
15

CASE NO. 12-CV-01971 CW

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

16 This protective order (“Protective Order”) is issued to expedite the flow of discovery
17 materials, to facilitate the prompt resolution of disputes over confidentiality of discovery
18 materials, to adequately protect information the parties are entitled to keep confidential, to ensure
19 that only materials the parties are entitled to keep confidential are subject to such treatment, and to
20 ensure that the parties are permitted reasonably necessary uses of such materials in preparation for
21 and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c) and any other applicable rules of this
22 Court. Unless modified, superseded, or terminated pursuant to the terms contained herein, this
23 Protective Order shall remain in effect through the conclusion of the above-captioned action and
24 thereafter as set forth below.

25 In support of this Protective Order, the Court finds that:

26 A. Documents or information containing confidential research, development, business,
27 and/or commercial information and/or trade secrets within the meaning of Fed. R. Civ. P. 26(c)
28

1 (“Confidential Information”) are likely to be disclosed or produced during the course of discovery
 2 in this Action (“Action,” which shall include without limitation this action and any adjunct
 3 subpoena proceedings incident hereto before any tribunal);

4 B. The parties and non-parties to this Action may assert that public dissemination and
 5 disclosure of Confidential Information could severely injure or damage the party or nonparty
 6 disclosing or producing the Confidential Information and/or could place that party or nonparty at a
 7 competitive disadvantage;

8 C. Counsel for the party or parties receiving Confidential Information are presently
 9 without sufficient information to accept the representation(s) made by the party or non-party
 10 producing Confidential Information as to the confidential, proprietary, and/or trade secret nature of
 11 such Confidential Information; and

12 D. To protect the respective interests of the parties and non-parties, and to facilitate the
 13 progress of disclosure and discovery in this Action, the following Protective Order should issue.

14 **IT IS THEREFORE ORDERED THAT:**

15 1. This Protective Order shall apply to all information, documents and things subject
 16 to discovery in this Action produced either by a party or non-party in discovery in this Action,
 17 including, without limitation, testimony adduced at deposition upon oral examination or upon
 18 written questions, answers to interrogatories, documents and things produced, information
 19 obtained from the inspection of premises or things, and answers to requests for admission, or
 20 information disclosed pursuant to subpoena under Fed. R. Civ. P. 45 (“Discovery Material”).

21 2. Discovery Material containing Confidential Information is referred to as
 22 “Confidential Material.” The following information is not Confidential Material:

23 a. any information that at the time of disclosure to a receiving party is in the
 24 public domain; any information that, after its disclosure to a receiving party,
 25 becomes part of the public domain as a result of voluntary publication that
 26 does not involve a violation of this Protective Order;

27 b. any information that the receiving party can show by dated written records
 28 was already known to it prior to the disclosure, and with respect to which

1 the receiving party is under no obligation of confidentiality imposed outside
2 this Protective Order;

3 c. any information that the receiving party can show by dated written records
4 was received by it after the disclosure from a source who obtained the
5 information lawfully and under no obligation of confidentiality to the
6 producing party; and

7 d. any information that the receiving party can show by dated written records
8 was independently developed by it after the time of disclosure by personnel
9 who have not had access to the producing party's Confidential Material.

10 **Designation of Material**

11 3. In determining the scope of information which a party or non-party may designate
12 as Confidential Material, each party or non-party shall make such designations, and shall respond
13 to requests to permit further disclosure of Confidential Material, in good faith and so as not to
14 impose burden or delay on a receiving party or for tactical or other advantage in this Action.

15 4. Except as provided in paragraphs 5 and 6, the producing party or non-party shall
16 designate each document or thing it deems to be Confidential Materials as follows:
17 **"CONFIDENTIAL."**

18 5. The producing party or non-party may designate as **"HIGHLY CONFIDENTIAL**
19 **– OUTSIDE COUNSEL ONLY"** those Confidential Materials which contain Confidential
20 Information that is especially sensitive and could cause the party or nonparty to suffer significant
21 competitive harm if disclosed to an unauthorized person. Examples of such especially sensitive
22 Confidential Materials include but are not limited to pending but unpublished patent applications,
23 information concerning research, development, and other activities related to released or
24 unreleased products, strategic business planning information, legal communications with outside
25 entities, customer lists, marketing and sales information, financial information, license
26 agreements, and other highly confidential technical, proprietary, research, and development
27 information.

1 6. The producing party or non-party may designate as “**HIGHLY CONFIDENTIAL**
2 – **SOURCE CODE – OUTSIDE COUNSEL ONLY**” those Confidential Materials that include
3 or are in the form of computer code (including without limitation source code, object code, HTML
4 code, JavaScript code, CSS code, flash application code, scripts (in any language), and any other
5 computer code (collectively, “source code”)) and that would otherwise be appropriately designated
6 in accordance with paragraph 5.

7 7. A document or thing to be produced bearing the designation “**CONFIDENTIAL**,”
8 “**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**,” or “**HIGHLY**
9 **CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY**” shall be so marked on
10 its face (or in equivalent format if produced in native electronic format) by the producing party or
11 non-party before the document or thing is produced.

12 8. Where testimony is given at a hearing or deposition, and no designation is made at
13 the deposition or hearing, such testimony shall be deemed “**HIGHLY CONFIDENTIAL –**
14 **OUTSIDE COUNSEL ONLY**,” until the expiration of seven (7) calendar days after the
15 transcript of the testimony is provided by the court reporter. Pages, or entire transcripts, of
16 deposition or hearing testimony may be designated as “**CONFIDENTIAL**,” “**HIGHLY**
17 **CONFIDENTIAL – OUTSIDE COUNSEL ONLY**,” or “**HIGHLY CONFIDENTIAL –**
18 **SOURCE CODE – OUTSIDE COUNSEL ONLY**” by an appropriate statement either at the
19 time such testimony is given or by written notification within the seven (7) calendar day period. If
20 the testimony is not otherwise designated at the time of the deposition, hearing or the ensuing
21 seven (7) calendar day period, it will be deemed not to contain Confidential Material, unless a
22 Court orders otherwise.

23 9. Written discovery responses and the information contained therein may be
24 designated as containing “**CONFIDENTIAL**,” “**HIGHLY CONFIDENTIAL – OUTSIDE**
25 **COUNSEL ONLY**,” or “**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE**
26 **COUNSEL ONLY**” information by a statement, made at the beginning of the document or before
27 each response that contains such information, specifying the level of designation of the
28 Confidential Information.

1 10. Confidential Information not reduced to documentary or tangible form or which
2 cannot be conveniently designated as set forth above may be designated “**CONFIDENTIAL**,”
3 “**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**,” or “**HIGHLY**
4 **CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY**” information by
5 informing the receiving party of the designation in writing.

6 11. If documents or things are made available for inspection before production of
7 copies of selected items, such documents or things initially shall be deemed “**HIGHLY**
8 **CONFIDENTIAL – OUTSIDE COUNSEL ONLY**” unless otherwise designated at the time of
9 inspection and shall be subject to this Protective Order. Thereafter, the producing party shall have
10 thirty (30) days to review and designate the documents as set forth in paragraph 7 above prior to
11 furnishing copies to the receiving party.

12 12. Where Confidential Material has been produced without designation, or bearing a
13 mis-designation, the producing party may correct this through written notification to counsel for
14 the receiving party, and the receiving party shall thereafter mark and treat the document or thing in
15 the manner designated in the written notification, and such document or thing shall be subject to
16 this Protective Order as if it had been initially so designated. If, before receiving such notice, the
17 receiving party has disseminated any Confidential Material to individuals not authorized to receive
18 it hereunder, the receiving party shall make reasonable efforts to retrieve the Confidential Material
19 or to otherwise assure that the recipient(s) properly mark and maintain the Confidential Material.
20 In addition, the receiving party shall immediately notify the producing party of such
21 dissemination.

22 **Restrictions on Use and Disclosure of Confidential Materials**

23 13. The recipient of any Confidential Material shall maintain such information in a
24 secure and safe place, and shall exercise at least the same degree of care in handling the
25 Confidential Material as is exercised by the recipient with respect to its own Confidential Material
26 and to confidential information of a similar nature, but in no event less than due care.

1 14. Confidential Material, and the Confidential Information contained therein, shall be
2 used solely for the purposes of this Action and shall not be used for any other purpose except as
3 expressly provided herein or by further Order of the Court.

4 15. Confidential Material designated as “**CONFIDENTIAL**” and any information
5 contained therein shall be disclosed only to the following persons:

- 6 a. Counsel of record in this Action, including lawyers employed by local or
7 trial counsel who are working on this Action or outside attorneys for a
8 named party who, if they have not appeared in this Action, otherwise agree
9 to be bound by this Protective Order;
- 10 b. paralegals, litigation support services, secretarial and clerical staff as well as
11 the following categories of persons (provided that such persons have no
12 involvement in addressing any matter regarding the substantive issues in the
13 case): independent legal translators retained to translate in connection with
14 this Action; independent stenographic reporters and videographers retained
15 to record and transcribe testimony in connection with this Action; graphics,
16 translation, or design services retained by counsel of record for purposes of
17 preparing demonstrative or other exhibits for deposition, trial, or other court
18 proceedings in this Action; non-technical jury or trial consulting services
19 provided such individuals agree to be bound by this Protective Order; and
20 mock jurors provided (i) they execute the attached Undertaking in Exhibit A
21 attached hereto prior to receipt of Confidential Materials and (ii) they are
22 not allowed to retain a copy of any Confidential Materials after serving as
23 mock jurors;
- 24 c. The Court, its personnel and stenographic reporters (with such Confidential
25 Material having been filed under seal, lodged with the Court, or with other
26 suitable precautions as determined by the Court);
- 27 d. Members of the jury in this Action;
- 28 e. Any appellate court with jurisdiction over an appeal in this Action;

- f. At a deposition or hearing, any person who authored or previously received the Confidential Material and, subject to timely objection (including objection that such person is not internally authorized to receive such information), any person currently employed by the producing party or non-party;
- g. Any independent experts or consultants, and employees and assistants under the control of such expert or consultant, who is engaged by counsel of record in this Action or the parties to this Action, whether or not such expert or consultant is paid directly by a party, provided however that disclosure to such persons shall be made only after they first cleared the requirements set forth in paragraph 17 below;
- h. For each party, up to two (2) designated in-house counsel of the party and/or its parent/affiliate who are responsible for supervising or assisting in the defense of this Action may view materials or information designated as “**CONFIDENTIAL**” by a producing party or non-party. If there is a change in personnel or roles for in-house counsel of a party, the party may substitute other designees under this provision, so long as they meet the other criteria for clearance and keep the total to two or less; and
- i. For each party, up to three (3) representatives to the extent necessary for the litigation of this Action who shall be designated in writing by the party prior to receipt of Confidential Materials, and who shall agree to be bound by this Protective Order and execute the attached Undertaking in Exhibit A attached hereto prior to receipt of Confidential Materials.

16. Confidential Material designated as “**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**” or “**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY**” and any information contained therein may be disclosed only to those persons identified above in paragraphs 15(a) through 15(g), and subject to the provisions of paragraph 17 below.

1 17. Counsel for the parties intending to disclose a particular producing party's
2 Confidential Materials to experts, consultants, or employees and/or assistants under the control of
3 such expert or consultant (collectively, "Experts") specified in paragraph 15 or 16 above shall first
4 obtain a signed Undertaking, in the form of Exhibit A attached hereto, from each such consultant
5 or expert, and such counsel shall retain in their files the original of each such signed Undertaking.
6 A copy of the signed Undertaking from any Experts shall be forwarded to the producing party's
7 opposing counsel with the current curriculum vitae for the expert or consultant, along with a
8 statement identifying all entities with whom the expert or consultant has worked in the last five (5)
9 years. In addition, if the Experts are to be given access to the particular producing party's
10 **"HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY"** materials,
11 that intention shall be communicated concurrently with forwarding to opposing counsel of his/her
12 signed Undertaking. No Confidential Materials designated under this Order shall be disclosed to
13 such Experts until after fourteen (14) calendar days commencing with the service of a copy of the
14 executed Undertaking and curriculum vitae (from expert or consultant). Moreover, if during those
15 fourteen (14) calendar days the producing party's opposing counsel objects to such disclosure,
16 there shall be no disclosure of Confidential Materials to such Experts except by mutual agreement
17 of the producing party and receiving party, or by order of the Court. A party that receives a timely
18 written objection must meet and confer with the producing party (through direct voice-to-voice
19 dialogue) to try to resolve the matter by agreement within seven days of the written objection. If
20 no agreement is reached, the party seeking to make the disclosure to the Experts may file a motion
21 as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General
22 Order 62, if applicable) seeking permission from the court to do so. Any such motion must
23 describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the
24 Experts is reasonably necessary, assess the risk of harm that the disclosure would entail, and
25 suggest any additional means that could be used to reduce that risk. In addition, any such motion
26 must be accompanied by a competent declaration describing the parties' efforts to resolve the
27 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
28 setting forth the reasons advanced by the producing party for its refusal to approve the disclosure.

1 In any such proceeding, the party opposing disclosure to the Experts shall bear the burden of
 2 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 3 outweighs the receiving party's need to disclose the Confidential Materials to its Experts.

4 18. Nothing in this Protective Order shall prevent or otherwise restrict counsel of
 5 record from advising their client with respect to this Action and, in the course thereof, relying in a
 6 general way upon his or her examination of Confidential Material; provided, however, that in
 7 rendering such advice such counsel shall not disclose, reveal or describe the contents of any such
 8 materials except insofar as allowed (if allowed at all) under the terms of this Protective Order.

9 19. The restrictions on the use of Confidential Materials established by this Protective
 10 Order apply only to the use of information received by a party from another party or a non-party to
 11 this Action. A party is free to use as it pleases its own information or information that it obtained
 12 outside the discovery process in this Action.

13 Additional Protections for Source Code

14 20. Materials designated "**HIGHLY CONFIDENTIAL – SOURCE CODE –**
 15 **OUTSIDE COUNSEL ONLY**" ("Source Code") shall be subject to the following additional
 16 protections:

- 17 a. "**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE**
 18 **COUNSEL ONLY**" materials, to the extent in electronic format, shall be
 19 made available to persons authorized under paragraphs 15(a) and 15(g).
 20 "**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE**
 21 **COUNSEL ONLY**" materials shall be made available for inspection, in a
 22 format allowing it to be reasonably reviewed and searched, during normal
 23 business hours or at other mutually agreeable times, at an office of the
 24 producing party's local counsel or another mutually agreed upon location.
- 25 b. "**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE**
 26 **COUNSEL ONLY**" materials shall be made available for inspection on a
 27 secured computer in a secured room without Internet access or network
 28 access to other computers, and the receiving party shall not copy, remove,

1 or otherwise transfer any portion of the Source Code onto any recordable
2 media or recordable device. The producing party may visually monitor the
3 activities of the receiving party's representatives during any Source Code
4 review, but only to ensure that there is no unauthorized recording, copying,
5 or transmission of the Source Code. The producing party shall provide a
6 reasonably comfortable work environment within the secured site, including
7 maintaining a proper room temperature and providing power, lighting, a
8 table or desk, and chairs. Further, the producing party shall use reasonable
9 efforts to accommodate any request by the receiving party to (1) equip the
10 standalone computer with an external monitor with an external display
11 measuring at least 19 inches diagonal and configured to output to the
12 external monitor at the monitor's native resolution, and/or (2) make
13 available a second standalone computer if a second computer is reasonably
14 necessary under the circumstances. If the producing party does not have
15 19-inch monitor(s) and/or a second standalone computer reasonably
16 available to it at the Source Code production site, the receiving party shall
17 supply any such requested items at its own expense.

- 18 c. Upon installation of Source Code to the standalone computer, the producing
19 party shall use reasonable efforts to produce reasonably in advance of the
20 scheduled inspection, in electronic format, a list of all files installed on the
21 standalone computer, including path information so that the receiving party
22 may locate a particular file referenced therein. Access to the standalone
23 computer shall be permitted, after five court days advance notice to the
24 provider of the proposed inspection date and time and the identities of the
25 proposed inspectors, to outside counsel representing the receiving party and
26 experts retained by the receiving party who have been approved under
27 Paragraph 17 of this Protective Order. Counsel for the producing party
28 shall ensure that only these persons authorized pursuant to this paragraph

1 shall have access to the standalone computer. Moreover, the following
2 additional restrictions shall apply to such access:

3 (i) Each time a person accesses the standalone computer, the person
4 shall sign a sign-in sheet before, and a sign-out sheet subsequent to,
5 accessing the standalone computer. Such sheets shall include the
6 name of the person accessing and the date and time in and out. Such
7 sheets shall be maintained by counsel for the producing party, and
8 such sheets and any information on them shall be inadmissible in
9 this Action except in connection with proceedings before the Court
10 regarding any alleged violations of this Protective Order.

11 (ii) With the exception of those of the producing party, no other
12 computers, tablets, smartphones, blackberries, photographic or video
13 recording devices, or any recording media itself (including but not
14 limited to camera phones, cameras, video recorders, portable hard
15 drives, and/or USB flash drives) are permitted in a secured site
16 containing a standalone computer. However, the aforementioned
17 devices may be kept in a separate area within the office where
18 representatives of the receiving party may confer in private.

19 (iii) After five court days advance notice to the producing party as to the
20 time and date of desired access to a standalone computer and the
21 identities of the proposed inspectors, the producing party shall make
22 its standalone computer available for inspection.

23 (iv) Unless otherwise agreed in advance by the parties in writing, the
24 receiving party's outside counsel and/or experts shall remove all
25 notes, documents, and all other materials from the room that may
26 contain work product and/or attorney-client privileged information
27 at the end of each day. Materials inadvertently left in the Source
28 Code review room do not operate as a waiver of the attorney work

1 product doctrine or any other applicable privilege and shall be
2 returned to the owner promptly. The producing party shall not be
3 responsible for any items left in the Source Code review room.

4 (v) The receiving party's outside counsel and/or experts shall be entitled
5 to take notes in paper relating to the Source Code, but may not copy
6 verbatim lines of the Source Code into the notes. The receiving
7 party shall not copy, remove, or otherwise transfer any Source Code
8 from the standalone computer including, without limitation,
9 copying, removing, or transferring the Source Code onto any other
10 computers or peripheral equipment. The receiving party shall not
11 transmit any Source Code in any way from the producing party's
12 facilities or the offices of its outside counsel of record. Further, no
13 other written or electronic record of the Source Code is permitted
14 except as otherwise provided herein.

15 d. At the request and sole expense of the party seeking discovery, the
16 producing party shall permit authorized persons to use software tools of
17 their choosing for searching, inspecting, and/or analyzing the **"HIGHLY**
18 **CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY"**
19 materials on a standalone computer. Specifically, before viewing these
20 materials on a standalone computer, the receiving party shall notify the
21 producing party of the specific software tools desired to be used, and
22 provide such software tools to counsel for the producing party. Unless the
23 producing party objects to such software tools within seven (7) calendar
24 days of receipt of such notice, the producing party shall load such software
25 tools on the standalone computer upon provision of such software tools by
26 the receiving party. The parties agree to meet and confer in good faith to
27 resolve any such objections. If an authorized person from the receiving
28 party is viewing these materials on a standalone computer and wishes to use

1 additional software tools for searching, inspecting, and/or analyzing such
2 material, the receiving party shall notify the producing party or non-party of
3 such additional software tools and provide such software tools to producing
4 party or non-party, and the producing party or non-party shall use its best
5 efforts to load such software tools as soon as practical thereafter. At
6 receiving party's request, the producing party or non-party shall provide to
7 the receiving party or non-party the identity of programming languages
8 used to develop or edit these materials, and whether these materials were
9 developed or edited in a UNIX or Windows environment.

- 10 e. The receiving party may request paper copies of limited portions of source
11 code that are reasonably necessary for the preparation of court filing,
12 pleadings, expert reports, or other papers, or for deposition or trial, but shall
13 not request paper copies for the purpose of reviewing the source code other
14 than electronically as set forth in paragraph 20(a)-(c) in the first instance.
15 Within seven (7) business days of a request, the producing party shall either
16 (i) produce one copy set of the requested pages to the receiving party, or (ii)
17 inform the requesting party that it objects to the request as excessive or not
18 submitted for a permitted purpose. If, after meeting and conferring, the
19 producing party and the receiving party cannot resolve the objection, the
20 receiving party shall be entitled to seek a Court resolution of whether the
21 request is not reasonably necessary for the preparation of court filings,
22 pleadings, expert reports, or other papers, or for deposition or trial. The
23 receiving party shall not request printed copies of the Source Code in order
24 to review blocks of Source Code elsewhere in the first instance, i.e., as an
25 alternative to reviewing that Source Code electronically on the standalone
26 computer, as the parties acknowledge and agree that the purpose of the
27 protections herein would be frustrated by printing portions of code for
28 review and analysis elsewhere, and that the producing party shall be

1 required to print Source Code only when reasonably necessary. The
2 producing party will affix the proper Bates labeling and confidentiality
3 designation to any printed copies to be produced to the receiving party.
4 Further, the printed copies shall include line numbering which corresponds
5 to that displayed on the monitors of the Secured Computer(s) as viewed by
6 the receiving party, to the extent practical based on the installed viewing
7 software and installed printer. The receiving party shall maintain all paper
8 copies of any printed portions of the Source Code in a secured, locked area.
9 The Receiving Party shall not create any electronic or other images of the
10 paper copies and shall not convert any of the information contained in the
11 paper copies into any electronic format.

12 f. The receiving party's outside counsel of record shall only make additional
13 paper copies of the Source Code received from a producing party pursuant
14 to Paragraph 20.e above if such additional copies are (1) necessary to
15 prepare court filings, pleadings, or other papers (including a testifying
16 expert's expert report), (2) necessary for deposition, or (3) otherwise
17 necessary for the preparation of its case. The receiving party shall maintain
18 a log of any individual who has inspected any portion of the source code in
19 electronic or paper form. Upon seven (7) business day's advance notice to
20 the receiving party by the producing party that the producing party has a
21 reasonable basis to inspect the log, the receiving party meet and confer in
22 good faith with the producing party on the request for production of a copy
23 of this log to the producing party and, if the parties reach an impasse, may
24 move to compel the receiving party to provide a copy of this log to the
25 producing party.

26 g. For depositions, copies of Source Code that are marked as deposition
27 exhibits shall not be provided to the Court Reporter or attached to
28 deposition transcripts; rather, the deposition record will identify the exhibit

1 by its production numbers. All paper copies of Source Code brought to the
2 deposition shall be securely destroyed in a timely manner at the end of the
3 day in which the deposition concludes.

- 4 h. Except as provided in this paragraph, absent express written permission
5 from the producing party, the receiving party may not create electronic
6 images, or any other images, or make electronic copies, of the Source Code
7 from any paper copy of Source Code for use in any manner (including by
8 way of example only, the receiving party may not scan the Source Code to a
9 PDF or photograph the code). Images or copies of Source Code shall not be
10 included in correspondence between the parties (references to production
11 numbers shall be used instead), and shall be omitted from pleadings and
12 other papers whenever possible. If a party reasonably believes that it needs
13 to submit a portion of Source Code as part of a filing with the Court, the
14 parties shall meet and confer as to how to make such a filing while
15 protecting the confidentiality of the Source Code and such filing will not be
16 made absent (i) agreement from the producing party that the confidentiality
17 protections will be adequate, or (ii) Court order. If a producing party agrees
18 to produce an electronic copy of all or any portion of its Source Code or
19 provide written permission to the receiving party that an electronic or any
20 other copy needs to be made for a Court filing, the receiving party's
21 communication and/or disclosure of electronic files or other materials
22 containing any portion of Source Code (paper or electronic) shall at all
23 times be limited solely to individuals who are expressly authorized to view
24 Source Code under the provisions of this Order. Where the producing party
25 has provided the express written permission required under this provision
26 for a receiving party to create electronic copies of Source Code, the
27 receiving party shall maintain a log of all such electronic copies of any
28 portion of Source Code in its possession or in the possession of its retained

consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations where the electronic copies are stored. Additionally, any such electronic copies must be labeled “**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY**” as provided for in this Order.

- i. Nothing in this Protective Order shall obligate the parties to produce any Source Code or particular portion thereof, and this Protective Order is not an act or admission that any portion of a producing party’s source code is discoverable or relevant to any issues in this action.

Court Filings

21. Any party may file or lodge with the Court documents or things designated as Confidential Material under this Order. In no case, however, may a party submit more “**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY**” material as part of a filing with the Court than is necessary to argue the precise point that such material supports, and shall redact any such material that is included on the pages submitted but which is not required to argue the precise point that such material supports. A party shall seal any filings with the Court which comprise, embody, summarize, discuss, or quote from documents or things given a confidentiality designation under this Order, unless the parties otherwise agree in writing or the Court otherwise orders. Where reasonably practicable, only the portions of documents consisting of such items or information shall be lodged under seal, consistent with the Local Rules of the Northern District of California. Filing or lodging such information or items under seal shall be made in compliance with Local Civil Rule 79-5 and any other applicable rules.

Challenges to Confidentiality Designations

22. The acceptance by a party of documents or things produced with a confidentiality designation under this Order shall not constitute an agreement, admission, or concession, or permit an inference, that the material(s) are in fact properly the subject for protection under Fed. R. Civ. P. 26(c), or some other basis. Documents produced with a confidentiality designation under this Order shall be treated in accordance with the provisions of this Protective Order, except that any

1 party may at any time seek an Order from the Court determining that specified information or
 2 categories of information have been improperly designated, provided that before making such a
 3 motion the parties shall meet and confer in good faith to resolve any differences over the
 4 designation. In response to such a motion, the party asserting confidentiality shall have the burden
 5 of proving that the Confidential Material in question is protectable under Fed. R. Civ. P. 26(c) or
 6 some other basis, or, as the case may be, that the confidentiality designation is necessary under the
 7 circumstances. A party shall not be obligated to challenge the propriety of a designation of
 8 Confidential Material at the time made, and failure to do so shall not preclude subsequent
 9 challenge. Should any party seek an Order from the Court to determine whether specified
 10 information or categories of information are not properly designated the claimed designation shall
 11 remain operative and respected by all the parties and non-parties pending the Court's ruling.

12 **Discovery and Evidentiary Rules Remain Unchanged**

13 23. Nothing in this Protective Order shall require disclosure of material that a party or
 14 non-party contends is protected from disclosure by the attorney-client privilege, the attorney work-
 15 product immunity, or any other applicable privilege or immunity, nor preclude any party from
 16 moving the Court for an Order directing the disclosure of such material by such party or non-
 17 party. Nor shall anything in this Protective Order be deemed a waiver of any objections to
 18 discovery requests served by the parties or shall change the timing of responses to discovery
 19 requests, which shall be governed by the applicable local and federal rules.

20 **Disclosure of Privileged / Protected Materials—No Waiver**

21 24. Production or disclosure of documents, things, or information subject to the
 22 attorney-client privilege, work product immunity, or any other applicable privilege or immunity
 23 shall neither waive nor prejudice any claim that such or related material is privileged or protected
 24 by any applicable privilege or immunity, provided the producing party notifies the receiving party
 25 in writing promptly after discovering such production. Such produced documents, things, or
 26 information, including all copies thereof, shall be returned to the producing party immediately
 27 upon request. No use shall be made of such documents, things, or information during deposition or
 28 at trial, nor shall such documents, things, or information be shown to anyone who has not already

1 been given access to them subsequent to the request that they be returned. Should a privileged or
 2 protected document, thing, or information be produced inadvertently, the producing party shall
 3 then provide a withheld document log identifying such produced document or thing. The receiving
 4 party may move the Court for an Order compelling production of any produced document, thing,
 5 or information, but the motion shall not assert as a ground for production the fact of the production
 6 nor shall the motion disclose the content of the produced document, thing, or information (beyond
 7 any information appearing on the above-referenced log) in any way in connection with any such
 8 motion.

9 25. In the event of any disclosure of another party's Confidential Material, counsel for
 10 the party responsible for the disclosure shall immediately provide all pertinent facts to counsel for
 11 the party that originally produced the Confidential Material, and counsel for the party responsible
 12 for the disclosure shall make every effort to prevent further unauthorized disclosure including
 13 retrieving all copies of the Confidential Material from the recipient(s) thereof and attempting to
 14 secure the agreement of the recipients not to further disseminate the Confidential Material in any
 15 form. Compliance with the foregoing shall not prevent a party from seeking further relief from the
 16 Court.

17 **Modification / Amendment of this Order**

18 26. This Protective Order shall not prevent the parties from applying to the Court for
 19 relief therefrom or modification thereto, or from applying to the Court for further or additional
 20 relief by way of protective orders or otherwise, or from agreeing among themselves to
 21 modifications of this Protective Order.

22 27. In the event that a party desires to provide access to or disseminate Confidential
 23 Materials to any person not entitled to access under this Protective Order, it may move the Court
 24 for an order that such person be given access thereto if the parties cannot, after negotiating in good
 25 faith, agree to such additional access or dissemination.

26 **Production of Documents Under Third-Party Confidentiality Obligations**

27 28. During the course of this Action, a party may be requested to produce to another
 28 party Confidential Material subject to contractual or other obligations of confidentiality owed to

1 another party or a non-party by the party receiving the request. The party subject to such
 2 contractual or other obligation of confidentiality shall timely contact the non-party to determine
 3 whether such nonparty is willing to permit disclosure of non-party's Confidential Material under
 4 the terms of this Protective Order and shall inform the non-party of the contents of this Protective
 5 Order and specifically this paragraph. If the non-party consents to the disclosure of non-party's
 6 Confidential Material to the requesting party, the Confidential Material shall be produced in
 7 accordance with this Protective Order. If the non-party does not consent to disclosure of its
 8 Confidential Material under the terms of this Protective Order, the party subject to such
 9 contractual or other obligation of confidentiality shall promptly notify the requesting party in the
 10 Action in writing of that non-party's refusal to consent, including an identification of the refusing
 11 non-party. This Protective Order shall not preclude any party from moving the Court for an Order
 12 compelling production of such Confidential Material.

13 **Return of Confidential Materials**

14 29. Within sixty (60) calendar days after the final termination of this Action, including
 15 any appeals, all **"CONFIDENTIAL"** and **"HIGHLY CONFIDENTIAL – OUTSIDE**
 16 **COUNSEL ONLY"** materials, produced by any party or non-party, and all copies of such
 17 information, shall be returned to the producing party or non-party, or counsel of record shall
 18 certify in writing that such Confidential Materials have been destroyed. Counsel of record may
 19 retain a copy of all correspondence, pleadings, motion papers, discovery responses, deposition and
 20 trial transcripts, and expert reports designated **"CONFIDENTIAL," "HIGHLY**
 21 **CONFIDENTIAL – OUTSIDE COUNSEL ONLY,"** or incorporating Confidential Materials
 22 designated **"CONFIDENTIAL"** or **"HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL**
 23 **ONLY"** only, except that there shall be no obligation for either outside counsel or in-house
 24 counsel if applicable to return or destroy all copies of materials that are contained in e-mails, back-
 25 up tapes, and/or other not readily available electronic formats even if those materials have been
 26 specifically labeled as Confidential.

Confidentiality Obligations Survive

30. This Protective Order, and all obligations and duties arising under this Protective Order, shall remain in effect after the final termination of this Action, unless otherwise ordered by the Court.

Court Retains Jurisdiction

31. This Court retains jurisdiction indefinitely over the parties, and any persons provided access to Confidential Materials under the terms of this Protective Order, with respect to any dispute over the prohibited use or disclosure of such Confidential Materials.

32. No copy of any transcript of any deposition which is designated, in part or in whole, as Confidential Material under this Order shall be furnished by the court reporter to any person other than to counsel of record and counsel for a non-party, if the furnished transcript is of the non-party's own deposition. If the original of any transcript of any deposition designated pursuant to this Order must be filed, it shall be filed with the Court under seal in accordance with paragraph 21 hereof, unless otherwise agreed by the producing party.

Prosecution Bar

33. Absent the written consent of the Producing Party, any Plaintiff's Counsel (outside or in-house) that receives access to "**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**" or "**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY**" under this Protective Order shall not be involved, directly or indirectly, in any of the following activities: preparing, prosecuting, drafting, editing, amending, or otherwise affecting the disclosure in patent applications or specifications or the scope of claims in patents or patent applications relating to the subject matter of any information disclosed in the designated materials or relating to digital rights management technology, before any foreign or domestic agency, including the United States Patent and Trademark Office. This bar precludes Plaintiff's counsel, but not Defendants' Counsel, from participating in reexamination proceedings on behalf of a Party challenging the validity of a patent, where counsel will not be involved in crafting claims. This bar also precludes Plaintiff's Counsel, but not Defendant's Counsel, from participating directly or indirectly in reexamination proceedings on behalf of a patentee. This prohibition on patent

1 prosecution shall begin when access to Protected Material is first received by the affected
2 individual, and shall end two (2) years after the final resolution of this action, including all
3 appeals.

4 **No Obligation to Produce Any Defendants' Documents to Co-Defendants**

5 34. Unless the parties agree otherwise, no documents or things or discovery papers
6 produced by a Defendant to Plaintiff in this action and designated under this Order need be
7 provided to another Defendant, with the following exceptions: (1) documents filed with the Court,
8 (2) expert reports, including all attachments thereto, as well as any documents Plaintiff's expert(s)
9 specifically indicate in their expert report(s) that they relied upon in forming their opinions, but
10 not documents Plaintiff's expert(s) only otherwise reviewed, (3) discovery requests and responses,
11 (4) deposition transcripts and exhibits thereto, or other papers required to be served on all parties
12 to this Action, in which case all other Defendants shall respect and comply with the confidentiality
13 designations under which the documents or things were produced to Plaintiff. To avoid any doubt,
14 any documents, things, or discovery papers produced pursuant to this paragraph which were
15 designated "**HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY**" or "**HIGHLY**
16 **CONFIDENTIAL – SOURCE CODE – OUTSIDE COUNSEL ONLY**" shall not be shared or
17 discussed in any manner with in-house counsel or other representatives of a defendant other than
18 persons identified in paragraphs 15(a) through 15(g) and shall not be used for any purpose outside
19 of this litigation.

20 **Confidential Material Subpoenaed or Ordered Produced in Other Litigation**

21 35. If a party receiving Confidential Material is served with a subpoena, a notice of
22 subpoena or an order issued in other litigation that would compel disclosure of any materials it
23 received in this Action, the subpoenaed receiving party must notify the producing party in writing
24 as soon as practicable and in no event more than ten (10) business days after receiving the
25 subpoena or order. Such notification must include a copy of the subpoena or court order.

26 36. The receiving party also must immediately inform the subpoenaing party who
27 caused the subpoena or order to issue in the other litigation that some or all the material requested
28

1 by subpoena or other order is subject to this Protective Order and provide a copy of this Protective
2 Order to the subpoenaing party.

3 37. The purpose of paragraphs 35 and 36 is to inform the interested parties of the
4 existence of this Protective Order and to afford the producing party in this action an opportunity to
5 seek protection for its Confidential Materials in the court issuing the subpoena or order. The
6 producing party shall bear the burden and expense of seeking protection in that court.

7 **This Protective Order Applies to Confidential Materials Produced By Non-Parties**

8 38. The terms of this Protective Order shall be applied to the Confidential Materials of
9 a non-party, as long as that non-party agrees in writing to be bound by the terms of this Protective
10 Order.

11 **Agreement of the Parties**

12 39. By affixing their signatures below, the parties agree to abide by the terms of this
13 Stipulation until this Protective Order or a further protective order is entered by the Court.

14
15 DATED: August 23, 2012

THOMAS WHITELAW LLP

16
17 By: /s/ W. Paul Schuck
W. PAUL SCHUCK

18 Attorneys for Digital Reg of Texas, LLC

19
20 DATED: August 23, 2012

DINOVO PRICE ELLWANGER & HARDY LLP

21
22 By: /s/ Andrew Gerald DiNovo
ANDREW GERALD DINOVO

23 Attorneys for Digital Reg of Texas, LLC

1 DATED: August 23, 2012

WEIL GOTSHAL & MANGES LLP

2
3 By: /s/ Edward Robert Reines

EDWARD ROBERT REINES

4
5 Attorneys for Electronic Arts Inc. and Adobe
Systems Incorporated

6
7 DATED: August 23, 2012

HALTOM AND DOAN

8
9 By: /s/ Jennifer Haltom Doan

JENNIFER HALTOM DOAN

10 Attorneys for Adobe Systems Incorporated

11
12 DATED: August 23, 2012

BARCELO, HARRISON & WALKER, LLP

13
14 By: /s/ Reynaldo C. Barcelo

REYNALDO C. BARCELO

15 Attorneys for Valve Corporation

16
17 DATED: August 23, 2012

RIDDLE WILLIAMS PS

18
19 By: /s/ Bryan J. Case

BRYAN J. CASE

20 Attorneys for Valve Corporation

21
22 DATED: August 23, 2012

WILSON SONSINI GOODRICH & ROSATI

23
24 By: /s/ Marvin Craig Tyler

MARVIN CRAIG TYLER

25 Attorneys for Symantec Corporation

1 DATED: August 23, 2012

GOODWIN PROCTER, LLP

2
3 By: /s/ Anthony H. Cataldo

4 ANTHONY H. CATALDO

5 Attorneys for AVG Technologies USA, Inc.

6 DATED: August 23, 2012

WILSON ROBERTSON & CORNELIUS PC

7
8 By: /s/ Jennifer Parker Ainsworth

9 JENNIFER PARKER AINSWORTH

10 Attorneys for AVG Technologies USA, Inc.

11 DATED: August 23, 2012

GOODWIN PROCTER, LLP

12
13 By: /s/ Douglas J. Kline

14 DOUGLAS J. KLINE

15 Attorneys for Ubisoft, Inc.

16 DATED: August 23, 2012

ERISE IP, P.A.

17
18 By: /s/ Michelle Lyons Marriott

19 MICHELLE LYONS MARRIOTT

20 Attorneys for Ubisoft, Inc.

21 DATED: August 23, 2012

FENWICK & WEST, LLP

22
23 By: /s/ Hector J. Ribera

24 HECTOR J. RIBERA

25 Attorneys for Intuit Inc.

1 DATED: August 23, 2012

SHOOK HARDY & BACON LLP

2
3 By: /s/ Lynn C. Herndon
LYNN C. HERNDON

4 Attorneys for Zynga Game Network Inc.

5
6 DATED: August 23, 2012


SHOOK HARDY & BACON LLP

7
8 By: /s/ Angel Mitchell
ANGEL MITCHELL

9 Attorneys for Zynga, Inc.

10
11 **IT IS SO ORDERED.**

12
13
14 DATED: 8/30/2012


THE HONORABLE CLAUDIA WILKEN
United States District Judge

ATTESTATION

I, W. Paul Schuck, am counsel for Plaintiff DIGITAL REG OF TEXAS, LLC. I am the registered ECF user whose username and password are being used to file this [PROPOSED] STIPULATED PROTECTIVE ORDER. In compliance with General Order 45, Section X(B), I hereby attest that the above-identified counsel concurred in this filing.

DATED: August 23, 2012

THOMAS WHITE LAW LLP

By: /s/ W. Paul Schuck
W. PAUL SCHUCK

Attorneys for Plaintiff
DIGITAL REG OF TEXAS, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DIGITAL REG OF TEXAS LLC,

Case No.: 12-cv-01971-CW

Plaintiff,

vs.

ADOBE SYSTEMS INCORPORATED,
VALVE CORPORATION, ELECTRONIC
ARTS, INC., UBISOFT, INC., SYMANTEC
CORPORATION, INTUIT INC., AVG
TECHNOLOGIES USA, INC., ZYNGA
GAME NETWORK INC., and ZYNGA, INC.,

Defendants.

**UNDERTAKING CONCERNING RECEIPT OF CONFIDENTIAL
MATERIALS SUBJECT TO PROTECTIVE ORDER**

I, _____ declare that:

1. I presently reside at the following address: _____.

2. My present employer is _____ and the address of my
present employer is _____.

3. My present occupation or job description is _____.

4. I have received and carefully read the Protective Order in this Action dated
_____, 2012, and I understand its provisions. As a condition to receiving any Confidential
Materials, as that term is defined in the Protective Order, I agree to subject myself to the personal
jurisdiction of the United States District Court for the Northern District of California for the
enforcement of the provisions of that Protective Order. I understand that I am obligated, under the
Order of the Court, to hold in confidence and not to disclose the contents of any document or thing
marked or designated as “**CONFIDENTIAL**,” “**HIGHLY CONFIDENTIAL – OUTSIDE
COUNSEL ONLY**,” or “**HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE**

1 **COUNSEL ONLY**” to anyone other than those persons identified in paragraph 15 or 16 of the
2 Protective Order who are qualified to review such information. I further understand that I am not
3 to disclose to persons other than those persons identified in paragraph 15 or 16 of the Protective
4 Order any words, substances, summaries, abstracts, or indices of Confidential Materials or
5 transcripts disclosed to me. In addition to the foregoing, I understand that I must abide by all of
6 the provisions of the Protective Order.

7 5. At the termination of this Action or at any time requested by counsel of record in
8 this Action, I will return to counsel of record in this Action all documents and other materials,
9 including notes, computer data, summaries, abstracts, or any other materials including or reflecting
10 Confidential Materials which have come into my possession, and I will return all documents or
11 things I have prepared relating to or reflecting such information.

12 6. I understand that if I violate the provisions of this Protective Order, I will be in
13 violation of a Court Order and subject to sanctions or other remedies that may be imposed by the
14 Court and potentially liable in a civil action for damages by the disclosing party.

15 7. I declare under penalty of perjury of the laws of the United States that the foregoing
16 is true and correct.

17
18 Executed on: _____ Name: _____
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